

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MATTHEW G. SILVA,

Plaintiff,

v.

CHRISTINE GREGOIRE, *et al.*,

Defendants.

CASE NO. C05-5731RJB

ORDER ADOPTING REPORTS  
AND RECOMMENDATIONS,  
DENYING THE PLAINTIFF'S  
MOTION FOR TEMPORARY  
RESTRAINING ORDER, AND  
GRANTING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

This matter comes before the Court on the Reports and Recommendations of Magistrate Judge Strombom (Dkt. 118; Dkt. 124). The Court has considered the Reports and Recommendations and the remainder of the file herein.

**I. PROCEDURAL BACKGROUND**

On November 17, 2006, the defendants moved for summary judgment. Dkt. 87. Mr. Silva requested more time to respond to the motion, and his request was granted. Dkt. 90; Dkt. 93. Mr. Silva's response was due on or before February 2, 2007. Dkt. 93 at 2. Magistrate Judge Strombom recommends that the defendants' motion be granted. Dkt. 118 at 17. The Court has twice re-noted the Report and Recommendation on the defendant's motion to afford Mr. Silva more time to respond to the motion or object to the Report and Recommendation. Dkt. 126 at 2; Dkt. 131 at 2. No response has been filed, and Mr. Silva has not objected to the Report and Recommendation.

On February 12, 2007, the plaintiff moved for a temporary restraining order, preliminary injunction, and to supplement the complaint. Dkt. 104. The Report and Recommendation recommends that the plaintiff's motion be denied. Dkt. 124 at 7. The Court re-noted this Report and Recommendation to afford Mr. Silva more time to object. Dkt. 131 at 2. No objection has been filed.

## **II. DISCUSSION**

### **A. MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND TO SUPPLEMENT THE COMPLAINT**

The Report and Recommendation properly concludes that Mr. Silva fails to demonstrate the requisite risk of irreparable future harm by the named defendants to justify injunctive relief. Dkt. 124. Mr. Silva has not objected to the Report and Recommendation. On June 7, 2007, Mr. Silva filed a letter addressed to Governor Christine Gregoire. Dkt. 136. This letter specifies Mr. Silva's allegations as to the adequacy of the law library at the Washington Corrections Center but does not demonstrate that Mr. Silva is entitled to the injunctive relief he seeks.

The plaintiff also moves for leave to supplement the complaint "to allege facts and to add defendants in order to facilitate the court's jurisdiction over the issues addressed in th[e plaintiff's] motion." Dkt. 104 at 2. Such a supplementation would constitute an amendment of the first amended complaint. The defendants' response and the Report and Recommendation do not address this portion of the plaintiff's motion.

A "plaintiff's petition to amend its pleadings to add . . . a party defendant brings into consideration Rules 15 and 20 of the Federal Rules." *Desert Empire Bank v. Insurance Co.*, 623 F.2d 1371, 1374 (9th Cir. 1980). Federal Rule 15 provides as follows:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Fed. R. Civ. Pro. 15(a). It is unclear whether Mr. Silva has sought the written consent of the defendants before seeking leave of court to amend the complaint.

Federal Rule 20 provides for the permissive joinder of parties if the plaintiff asserts "any

1 right to relief in respect of or arising out of the same transaction, occurrence, or series of  
2 transactions or occurrences and if any question of law or fact common to all defendants will arise  
3 in the action.” Fed. R. Civ. Pro. 20(a). These rules afford the courts discretion, and “courts have  
4 shown a strong liberality in allowing parties to amend their pleadings when such amendments have  
5 satisfied the explicit requirements of the rules.” *Desert Empire Bank v. Insurance Co.*, 623 F.2d  
6 1371, 1375-76 (9th 1980). If the explicit requirements are satisfied, courts consider several  
7 factors before determining whether to grant leave to amend: (1) possible prejudice to existing  
8 parties, (2) the moving party’s delay in seeking amendment, (3) the motive behind the  
9 amendment, (4) the closeness of the relationship between new and old parties, (5) the effect of the  
10 proposed amendment on the court’s jurisdiction, and (6) the new party’s notice of the litigation.  
11 *Id.* at 1375.

12 As a threshold matter, the Court notes that Mr. Silva previously amended his complaint  
13 (Dkt. 14) and was denied leave to file a second amended complaint adding seventeen new  
14 defendants, twenty-three John and Jane Does, the defendants’ marital communities, and seven  
15 new claims (Dkt. 85). The Court is unable to analyze Mr. Silva’s request to amend his complaint  
16 because Mr. Silva fails to specify what factual allegations and defendants he would add or to  
17 provide a proposed second amended complaint. The Court will not speculate as to the substance  
18 of Mr. Silva’s proposed amendment and should not grant blanket leave to amend. The Court  
19 should therefore adopt the Report and Recommendation (Dkt. 124) and deny the motion  
20 plaintiff’s motion for injunctive relief and to supplement his complaint.

## 21 **B. THE DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

22 The Report and Recommendation thoroughly addresses the defendants’ motion and  
23 properly concludes that summary judgment should be granted in favor of the defendants for  
24 failure to exhaust administrative remedies and, in the alternative, for failure to create a genuine  
25 issue of material fact for trial. The Court should adopt the Report and Recommendation (Dkt.  
26 118) and dismiss with prejudice Mr. Silva’s claims against the defendants.


## 27 **III. ORDER**

1 Therefore, it is hereby

2 **ORDERED** that the Court **ADOPTS** the Reports and Recommendations of Magistrate  
3 Judge Strombom (Dkt. 118; Dkt. 124); the plaintiff's Motion for Temporary Restraining Order  
4 (Dkt. 104) is **DENIED**; the Defendants' Motion for Summary Judgment is **GRANTED**; and the  
5 plaintiff's claims are **DISMISSED WITH PREJUDICE**.

6 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel  
7 of record and to any party appearing pro se at said party's last known address.

8 DATED this 12<sup>th</sup> day of June, 2007.

9  
10   
11 Robert J. Bryan  
United States District Judge